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6 IN THE UNITED STATES DISTRICT COURT  
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8 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
9

10 UNITED STATES OF AMERICA,

No. CR 08-00730 WHA

11 Plaintiff,

12 v.

13 IVAN CERNA, *et al.*,

14 Defendants.  
15 \_\_\_\_\_/

**ORDER DENYING DEFENDANT  
GUILLERMO HERRERA'S  
MOTION TO VACATE  
INVITATION TO MAKE AN  
EX PARTE SHOWING AND  
VACATING HEARING**

16 A previous order (Dkt. No. 1655) granted in part defendants' motions for a bill of  
17 particulars and ordered the government to reveal the identities of some of victims of crimes  
18 charged in this matter. It stated that if the government contended that revealing a victim's  
19 identity would endanger his or her safety, disclosure "may possibly be delayed by further order"  
20 if the government demonstrated to the Court a specific threat to the victim. The government was  
21 given permission to file its showing ex parte or under seal.

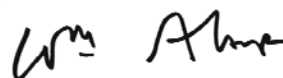
22 Defendant Guillermo Herrera moves for an order to vacate permission for the government  
23 to make an ex parte showing in support of its request to withhold victims' identities. Defendant  
24 Herrera argues that such permission violates due process by allowing the Court to consider  
25 "secret evidence in non-adversarial proceedings" (Br. at 2).

26 A previous order in this matter already found that the government made a substantial  
27 showing of danger to inculpatory civilian witnesses and on that basis issued a protective order  
28 aimed at balancing the need to protect civilian witnesses from retaliation against the need of the  
defense to prepare for trial (Dkt. No. 631). Rule 16(d)(1) authorizes the Court, for good cause, to

1 deny, restrict, or defer discovery or inspection, and explicitly states that a party may be permitted  
2 “to show good cause by a written statement that the court will inspect *ex parte*.” The previous  
3 order granting the government permission to make an *ex parte* showing regarding alleged danger  
4 to victims is a reasonable exercise of this authority. Defendant Herrera’s motion is therefore  
5 **DENIED**. The hearing noticed for May 25, 2010, is **VACATED**.

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7 **IT IS SO ORDERED.**

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9 Dated: May 6, 2010.



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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE